

Introduction

Guardianship Administration is a process. Every action of the Guardian and reaction of the Court are parts of an ongoing relationship that can continue for a lengthy period of time, similar to a journey with a beginning, middle and an end. This manual is intended as a roadmap to assist navigation through the guardianship process. Its purpose is to provide basic information about what the courts require and expect from its guardians and is not intended as a substitute for legal counsel.

Helpful Definitions

Guardianship A court supervised procedure where one person is given the legal authority to make personal or financial decisions for an individual who can no longer make such decisions for himself or herself;

Ward A person for whom a guardian has been appointed;

Guardian The qualified person appointed by the Court to be responsible for making decisions for the Ward. Generally, there are 2 types of guardians:

Guardian of the Person The person entitled to the charge and control of the person of the ward;

Guardian of the Estate The person charged with managing the Ward's estate; These responsibilities will be addressed more thoroughly in that portion of the training specifically addressed to the guardians of the estate.

THE JOURNEY BEGINS

Technically, a guardianship begins when the Judge signs the **Order Appointing Guardian** following a brief hearing. After the Order is signed, the guardian must **qualify** in order to receive **Letters of Guardianship**.

The Appointment

Nature of the Proceeding Most guardianship hearings are conducted “at the bench.” This means that all parties, their attorneys and ad litem approach the Judge’s bench together. In this type of proceeding, testimony is taken directly before the bench, and nobody takes the witness stand.

Rules of Courtroom Decorum The type of proceeding described above is designed for judicial economy, however, it is a formal court proceeding, and all participants should conduct themselves accordingly. In that regard, please be aware that the following are **NOT** allowed in the courtroom:

Talking

Cellular phones or beepers

Chewing gum

Hats

Shorts

The Order Appointing Guardian At the conclusion of testimony, the Judge will determine if the facts presented are sufficient to support the appointment of a guardian. If so, the Judge will sign an Order Appointing Guardian. The order will identify the guardian and the ward. Additionally, it will specify the powers and duties of the guardian as well as the Ward’s limited rights.

Qualification In order to qualify, within twenty (20) days of appointment, a guardian must:

1. Take and file an oath that the guardian will perform and faithfully discharge his/hers duties;
2. File the required bond:
 - (a) for a guardian of the person either a personal surety bond or a corporate surety bond;
 - (b) for a guardian of the estate, typically a corporate surety bond;

Letters of Guardianship Letters of Guardianship are the proof of authority to act as a guardian;

1. The specific powers of the guardian are set forth;
2. Letters of Guardianship **expire** one year and four months after the date of issuance. The clerk cannot renew the letters until the guardian has filed the required annual account for the guardian of the estate or the required annual report for the guardian of the person.

THE JOURNEY CONTINUES

Powers and Duties of a Guardian of the Person

Specified Powers of Guardian of the Person – Unless the Judge orders otherwise, the Texas Probate Code grants a Guardian of the Person the following:

- a. The right to have physical possession of the Ward and to establish the Ward's legal domicile;
- b. The power to consent to medical, psychiatric and surgical treatment other than the in-patient psychiatric commitment of the ward, but including the right to make end-of-life support, hydration and nutrition;
- c. Any other powers specifically granted in the order appointing the guardian.

Specified Duties of Guardian of the Person – Likewise, the Texas Probate Code imposes the following duties upon a Guardian of the Person:

- a. The duty of care, control, and protection of the ward;
- b. The duty to provide the ward with clothing, food, medical care and shelter; and
- c. The duty to file an annual report reporting on the condition of the ward.
- d. The duty to advise the court immediately of any address changes of the guardian or the ward. Failure to do so is cause for removal of the guardian and cancellation of all Letters of Guardianship;
- e. Notify the Court **immediately** if the ward dies or, in the case of a minor, when the ward turns 18;
- f. Notify the Court immediately if you or any other person or entity has been appointed the conservator of the ward or if adoption has occurred;

Expectations of the Guardian of the Person – In addition to the specific powers and duties, the Court expects its appointed Guardians to:

- a. **See that the ward is appropriately housed;**
- b. Have frequent and meaningful **personal visits** with the Ward;
- c. Make every effort to insure the Ward is receiving all **available benefits** for which he/she may be eligible and entitled;
- d. Obtain psychological, social services, training, educational, social and vocational **opportunities** for the Ward as needed and appropriate; and
- e. Authorize and arrange any needed medical, dental, ophthalmologic and surgical **treatment**.

At the conclusion of the hearing, the Judge will provide instructions to the Guardian of the Person. The guardian will keep one copy of these instructions and sign the other copy which will be kept in the Court's file.